

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOHN JOHNSON,

Defendant.

No. 11-cr-487 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

As indicated in the Court’s prior order, the United States Court of Appeals for the Second Circuit granted Defendant John Johnson leave to file a second or successive petition for writ of habeas corpus under 28 U.S.C. § 2255(h). (Doc. No. 167.) After considering the factors set forth in *Hodge v. Police Officers*, 802 F.3d 58, 61–62 (2d Cir. 1986), the Court determined that the appointment of counsel for Johnson was warranted. (*Id.*) Since then, Jeffrey G. Pittell has filed a notice of appearance on behalf of Johnson. (Doc. No. 168.) The Court previously indicated that it would “set a date by which Johnson’s counseled habeas submission shall be due” following Mr. Pittell’s notice of appearance. (Doc. No. 167.) But, as made clear by Johnson’s motion for leave to file a second or successive petition, his petition appears to turn on whether attempted Hobbs Act robbery qualifies as a crime of violence under *United States v. Davis*, 139 S. Ct. 2319 (2019) and *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019). That question was presented to the Second Circuit in *United States v. McCoy*, No. 17-3515(L), which was argued on October 23, 2019. Accordingly, Johnson should file his counseled submission, if he determines that such a

submission is still necessary, within thirty days after the Second Circuit's *McCoy* decision is issued.

SO ORDERED.

Dated: September 29, 2020
New York, New York

A handwritten signature in blue ink, appearing to read 'R. Sullivan', is written over a horizontal line.

RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation